



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

October 25, 2005

**REGISTERED MAIL**  
RB 253 008 465 US

Whispering Meadows Development, LLC  
ATTN: Mr. Scott Hendrickson  
P.O. Box 866  
Battle Ground, WA 98604

RE: Water Quality Certification Number **2878** for Corps Nationwide Permit 39, Residential, Commercial, and Institutional Developments, Reference No. 200400495 to construct a roadway for a 32-lot residential subdivision west of 185<sup>th</sup> Street and south of NE 189<sup>th</sup> Street near Battle Ground, Clark County, Washington

Dear Mr. Hendrickson:

The Nationwide Permit 39, issued by the U.S. Army Corps of Engineers on February 18, 2005 and subsequent Public Notice issued by the Department of Ecology on April 26, 2005 for proposed work within wetlands near the City of Battle Ground, Clark County, Washington has been reviewed. On behalf of the State of Washington, we certify that the work proposed in the application for Department of Army Nationwide permit, and Ecology's public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This letter also serves as the State response to the Corps of Engineers.

- This certification concurrence is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Lori Ochoa at (360) 407-6926. The enclosed Order may be appealed by following the procedures described in the Order.

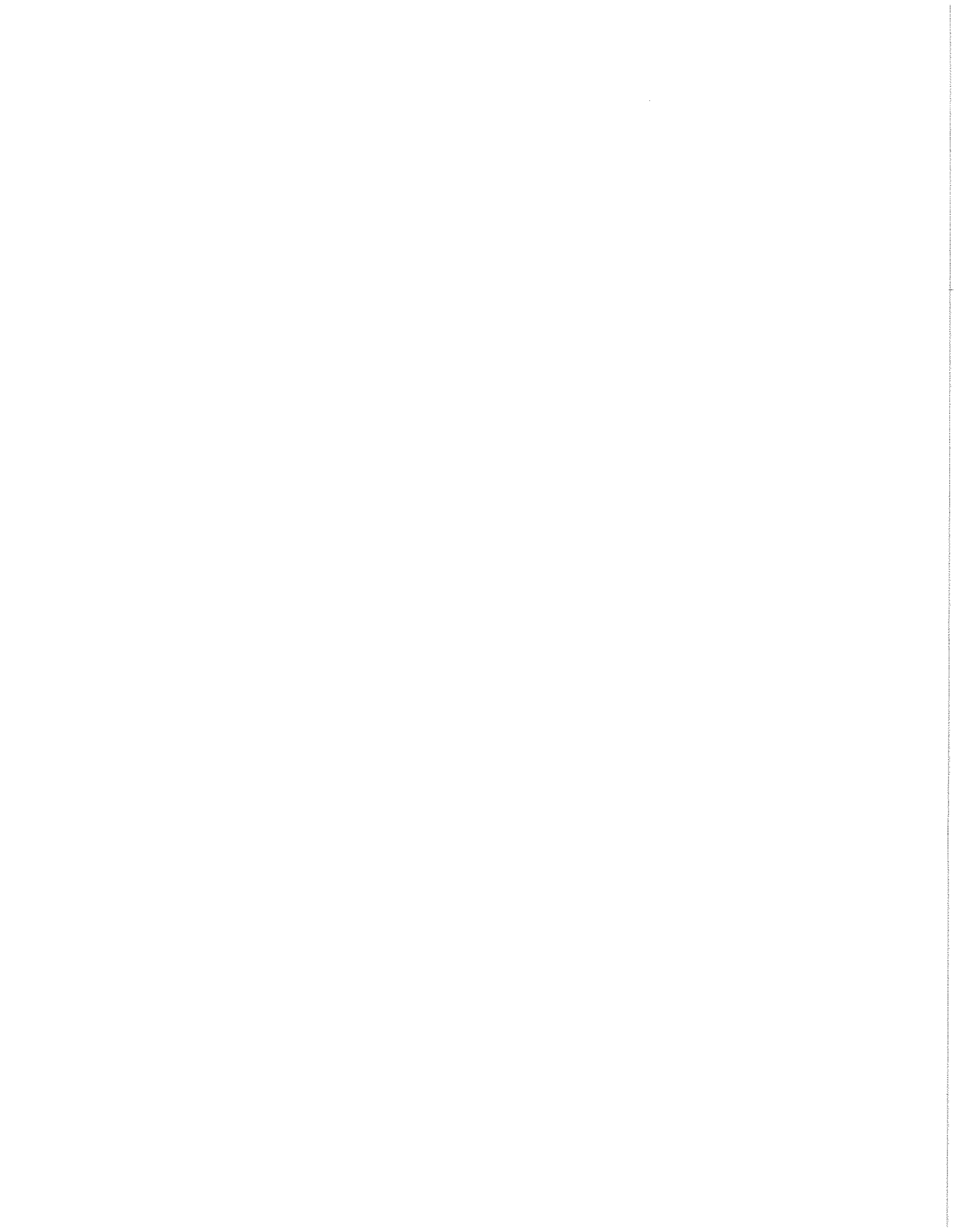
Sincerely,

Perry J. Lund, Unit Supervisor  
Shorelands and Environmental Assistance Program  
Southwest Regional Office

PL:LO:dn  
Enclosure

cc: Ron Klump, U.S. Army Corps of Engineers  
Brian Carrico, City of Battle Ground  
Eric Holmes, City of Battle Ground  
Brent Davis, Clark County  
Dustin Day, The Resource Company





**IN THE MATTER OF GRANTIN ) ORDER #2878**  
**A WATER QUALITY ) (Corps No. 200400495)**  
**CERTIFICATION TO ) To construct a roadway for a 32-lot residential**  
**Whispering Meadows ) subdivision west of 185<sup>th</sup> Street and south of NE 189<sup>th</sup>**  
**Development LLC ) Street within wetlands associated with Salmon Creek**  
in accordance with 33 U.S.C. 1341 ) located near Battle Ground, Clark County, Washington  
FWPCA § 401, RCW 90.48.260, )  
RCW 90.48.120 and WAC 173-  
201A

TO: Whispering Meadows Development, LLC  
ATTN: Mr. Scott Hendrickson  
P.O. Box 866  
Battle Ground, WA 98604

On February 18, 2005 the U.S. Army Corps of Engineers issued Nationwide Permit 39, and on April 26, 2005, a Public Notice for application of a water quality certification from the State of Washington was distributed by the Department of Ecology (Ecology) for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401).

The proposed project involves placement of 0.49 acre fill in wetlands associated with Salmon Creek west of 185<sup>th</sup> Street and south of NE 189<sup>th</sup> Street in the Meadow Glade area of Clark County, Washington; SW ¼ Section 10, Township 3 North, Range 2 East, W.M., WRIA 28. The purpose of this project is to construct a roadway for a 32-lot residential subdivision with associated infrastructure on a 36-acre project site.

Mitigation for impacts to wetlands will include creation of 0.49 acre of Category III wetlands from a non-wetland near the southeast corner of the project site. An additional 0.98 acre of Category IV emergent wetland will be enhanced to a Category III forested wetland community.

For purposes of this Order, the term "Applicant" shall mean Whispering Meadows, LLC and their agents, assigns, and contractors.

#### **AUTHORITIES:**

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, RCW 90.48.120 and RCW 90.48.260, Ecology has investigated this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 302, 303, 306, and 307);
2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; and,

3. Conformance with the provision of using all known, available, and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

### **WATER QUALITY CERTIFICATION CONDITIONS:**

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. 1341, RCW 90.48.120, RCW 90.48.260, Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions contained within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

#### **A. General Conditions:**

- A1. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Southwest Regional Office, Attn: Federal Permit Coordinator, P.O. Box 47775, Olympia, WA 98504-7775. Any submittals shall be identified with Order No. 2878 displayed.
- A2. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on May 05, 2004. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order. Within 30 days of receipt of an updated JARPA Ecology will determine if a modification to this Order is required.
- A3. This Order shall be withdrawn if the project is revised in such a manner or purpose that Ecology determines the revised project requires a new authorization and public notice. The Applicant will then be required to reapply for a 401 Water Quality Certification by submitting a new JARPA to Ecology.
- A4. This Order does not exempt the Applicant from, and is conditioned upon compliance with, other statutes and codes administered by federal, state, and local agencies.
- A5. Copies of this Order and all related permits, approvals, and documents shall be kept on the project site and readily available for reference by Ecology personnel, project managers, construction superintendent, construction managers and lead workers, and state and local government inspectors.

- A6. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
- A7. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
- A8. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources **except** as specifically provided for in conditions of this Order.
- A9. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

**B. No Further Impairment of Existing Water Quality**

- B1. Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore, nothing in this certification shall absolve the Applicants from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

**C. Timing:**

- C1. This Order is valid until all compliance requirements in this document have been met.

**D. Notification Conditions:**

- D1. The Applicant shall notify Ecology's Southwest Regional Office Federal Permit Coordinator at least fourteen (14) days prior to the onset of any work on the site.
- D2. The Applicant shall notify Ecology's Southwest Regional Office Federal Permit Coordinator within fourteen (14) days after completion of construction.
- D3. The Applicant shall ensure that all appropriate project engineers and contractors at the project and mitigation sites shall have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment #A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans,

documents and approvals. These statements shall be provided to Ecology no less than seven (7) days before construction begins at the project site.

**NOTE:** These notifications shall include the applicant's name, project name, project location, the number of this Order, contact and contact's phone number.

**E. Construction Conditions**

- E1. The project area shall be clearly marked/staked prior to construction to protect adjacent wetlands and their buffers from construction impacts. Clearing limits, travel corridors and stockpile sites shall be clearly marked. Sensitive areas and buffers that are to be protected from disturbance shall be marked so as to be clearly visible to equipment operators. All project staff shall be trained to recognize construction fencing or flagging that identifies wetland boundaries. Equipment shall not be moved into or operated in wetlands or stream channels that are not authorized to be filled. Equipment shall enter and operate only within the marked clearing limits, corridors and stockpile areas.
- E2. Work in or near waters of the state shall be done in a manner that minimizes turbidity, erosion, and other water quality impacts.
- E3. Erosion control devices (e.g., hay bales, detention areas, filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting project construction and shall be maintained through construction.
- E4. Periodic inspection and maintenance of all erosion control structures shall be conducted no less than every 7 days from the start of the project to site stabilization. Additional inspections shall be conducted prior to and after expected rainfall events to ensure erosion control measures are in good working condition. Any damaged structures shall be immediately repaired. If it is determined at the inspection that additional measures are needed to control stormwater and erosion, they shall be implemented immediately.
- E5. All construction debris shall be properly disposed of on land so that it cannot cause water quality degradation to state waters.
- E6. All excess excavated material shall be disposed of above the 100-year floodplain and shall be contained so as to prevent its re-entry into waters of the state.
- E7. Turbid water generated from construction activities, including turbid de-watering water, shall not be discharged directly to waters of the state, including wetlands. Turbid water shall be routed to an upland location to allow removal of fine sediment and other contaminants.
- E8. At the completion of construction, hydroseeding may be done to stabilize slopes and soils until other required planting is completed. Hydroseed mix shall consist of native, non-invasive, or annual plant species only.
- E9. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in order to prevent contamination to surface waters. All

fueling areas shall be provided with adequate spill containment. Fueling equipment and vehicles within 50 feet of state waters and wetlands is not allowed.

- E10. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall not be discharged into state waters.

**F. Wetland Mitigation**

- F1. Project mitigation shall be constructed and maintained as described in the *Final Wetland Mitigation Plan, Whispering Meadows, Clark County, WA* dated June 19, 2004 (Final Wetland Mitigation Plan).
- F2. Compensatory mitigation construction and installation shall occur prior to or concurrently with, project impacts to wetlands.
- F3. The Applicant shall implement the "Additional Measures" listed on Page 6 of the Final Wetland Mitigation Plan. These additional measures include the following:
- F3a. A building envelope outside of the wetland buffer for each lot that will be recorded on the final plat.
- F3b. Physically marking the outer boundary of the wetland buffer with a hedgerow, boulders, or fence. Any other type of shielding structure needs to be approved by Ecology.
- F3c. Signs stating "Wetland Mitigation Site, please retain in a natural state" shall be placed on each lot or every 100 feet, whichever is less, along the outer boundary of the wetland buffer.
- F3d. All wetlands, buffers, and mitigation areas for this project will be recorded in a conservation covenant that will require the wetlands and buffers to remain in a natural state.
- F4. Wetland mitigation monitoring and maintenance shall be implemented as described on Pages 7 and 8 of the Final Wetland Mitigation Plan.
- F5. The Applicant is responsible for achieving the mitigation "Performance Standards" outlined on Page 7 in the Final Wetland Mitigation Plan. These performance standards shall be met over the ten year monitoring period. The final mitigated wetlands shall meet the Category II characteristics as described in the *Washington State Wetlands Rating System for Western Washington* revised August 2004.
- F6. The property owner shall grant Ecology access to the mitigation areas for inspection during the 10 year monitoring period or until mitigation success has been achieved.
- F7. Prior to implementing any contingency measures, applicant will consult with permitting agencies.
- F8. Contingency measures shall be implemented as listed on Page 8 of the *Final Wetland Mitigation Plan, Whispering Meadows, Clark County, WA* dated July 19, 2004. Additional monitoring of the mitigation area may be required by Ecology if wetland monitoring reveals that performance measures are not being met.

- F9. Any changes to the mitigation plan or monitoring requirements must be approved in writing by Ecology before they are incorporated into the plan or implemented on the ground.
- F10. Deed Restriction: Permanent protection of the wetland mitigation area and buffers shall be recorded on the property deed for the Wetland Mitigation Site. The deed shall clearly indicate that the wetland mitigation area are "waters of the state". Documentation that this requirement has been fulfilled shall be provided to the Southwest Regional Office Federal Permit Coordinator as part of the "as-built" report.

**G. Reporting Conditions**

- G1. The applicant shall submit a Stormwater Pollution Prevention Plan (SWPP) and a Temporary Erosion and Sediment Control (TESC) Plan 14 days prior to beginning construction. These plans shall include the following information:
- a. TESC Plan
    - Name and phone number of person responsible for implementing plan;
    - best management practices (BMP's) anticipated to be implemented;
    - frequency of BMP inspections;
    - and contingency plan in the event of adverse weather condition or other foreseeable undesirable conditions.
- G2. A detailed "as built" report shall be prepared after construction showing any variances from the final mitigation plan. The "as-built" shall be the baseline document used for all future monitoring of the mitigation project. It shall include but not be limited to:
- comments from a wetland specialist present on site during mitigation construction;
  - final site plan showing site topography (both site plan view and typical sections) and clearly indicating the mitigation site boundary;
  - photographs of the area taken from permanent photo points which will be designated on the site plan;
  - the installed planting scheme showing densities, sizes, and approximate locations of plants as well as plant sources and time of planting; and,
  - an analysis of any changes to the mitigation plan that occurred during construction.
  - demonstration that the mitigation areas have been successfully established and that the "Additional Measures" have been implemented.
  - documentation that the wetland mitigation area and buffers have been recorded on the property deed for the Wetland Mitigation Site.



A copy of the "as-built" report and drawings shall be sent to Ecology's Southwest Regional Federal Permit Coordinator within 60 days of completing construction and planting, and in no case later than December 31, 2006.

- G3. Mitigation monitoring reports shall be submitted to Ecology by December 1 of each monitoring year for years 1, 2, 3, 5, 7, and 10 and as further described in the Final Wetland Mitigation Plan dated July 19, 2004.

**H. Emergency/Contingency Measures:**

- H1. Any in-water work that is out of compliance with the provisions of this Order, or any discharge of oil, fuel, or chemicals into state waters, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, the operator shall immediately take the following actions:

H1a. Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.

H1b. Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-hour spill response team at (360) 407-6300, and within 24 hours to Ecology's Southwest Regional Office Permit Coordinator at (360) 407-6926.

H1c. Submit a written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Applicants from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

- H2. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters, including wetlands.
- H3. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology's Southwest Regional Spill Response Office at 360 407-6300.

**Appeal Process:**

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology, within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board  
4224 - 6th Avenue SE, Rowe Six, Bldg. 2  
P.O. Box 40903  
Lacey, Washington 98504-0903

Your appeal must also be served on:

The Department of Ecology  
Appeals Coordinator  
P.O. Box 47608  
Olympia, Washington 98504-7608.

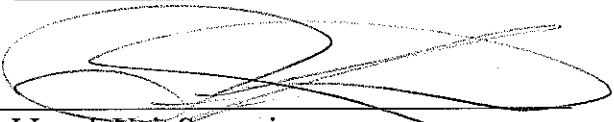
In addition, please send a copy of your appeal to:

Loree' Randall  
Department of Ecology  
P.O. Box 47600  
Olympia, Washington 98504-7600

*For additional information: Environmental Hearings Office Website: <http://www.eho.wa.gov>*

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated 25 October 2005 at Lacey, Washington



Perry J Lund, Unit Supervisor  
Shorelands and Environmental Assistance Program  
Department of Ecology – Southwest Regional Office

Attachment # A  
Water Quality Certification, Order #2878  
Statement of Understanding

I, \_\_\_\_\_, state that, I will be involved as an agent or contractor for Whispering Meadows Development, LLC in the construction of a roadway for a 32-lot residential subdivision west of 185<sup>th</sup> Street and south of NE 189<sup>th</sup> Street, within wetlands associated with Salmon Creek, located near Battle Ground, Clark County, Washington. I further state that I have read and understand the relevant conditions of Washington Department of Ecology Water Quality Certification Order #2878 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

